



**Mutunga v St Catherine Schools Limited & another (Civil Case
23 of 2017) [2024] KEHC 5346 (KLR) (30 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 5346 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CIVIL CASE 23 OF 2017
MW MUIGAI, J
APRIL 30, 2024**

BETWEEN

SHADRACK MUASYA MUTUNGA PLAINTIFF

AND

ST CATHERINE SCHOOLS LIMITED 1ST DEFENDANT

JACKSON MUASYA 2ND DEFENDANT

JUDGMENT

1. By the Plaintiff dated 23rd November, 2017 and filed in court on 22nd December, 2017, the Plaintiff averred that at all material time herein the 1st Defendant was the registered owner of motor vehicle registration Number KBA 731T.
2. The Plaintiff deposed that at all material times to this suit, the said motor vehicle was driven by the 2nd Defendant, the authorized driver, servant and/ or agent of the 1st Defendant acting within the scope of his employment or authority for the benefit of the 1st Defendant and the 1st Defendant is hereby vicariously liable for the acts of the 2nd Defendant.
3. The Plaintiff deposed that on the 28th day of May 2016, at around 6:00a.m. the Plaintiff was lawfully and carefully driving his motor vehicle registration number KBL 933X along Nairobi Mombasa Road coming from Nairobi heading to Machakos when at Namanga interchange, where the dual carriage begins, the 2nd Defendant, so carelessly, recklessly and negligently drove, managed and/or controlled motor vehicle registration number KBA 731T in that he took the wrong lane along the said road.
4. The Plaintiff averred that by reason of the said carelessness, recklessness and negligence and whilst driving in the opposite direction to the Plaintiff, the 2nd Defendant drove, caused and/or permitted Motor Vehicle Registration Number KBT 731T to so violently collide with the Plaintiff's Motor Vehicle Registration Number KBL 933X. The particulars of negligence are on the face of the Plaintiff.



5. It was argued that by reason of the aforesaid matters, he suffered substantial loss and damage for which he holds the defendants liable.
6. Particulars of special damage were outlined.
7. Particulars of Further Treatment and Costs were also outlined
8. Particulars of Loss of Earnings and Future Earnings were also outlined.
9. Particulars of Future Further treatment were also outlined.
10. The Plaintiff prayed for judgment against the Defendants jointly and/or severally for:
 - a. General Damages for pain suffering and loss of amenities together with interest thereon.
 - b. Damages for quadriplegic equipment, future medical and hospitalization and drugs as set out in paragraph 9above.
 - c. Special damages for loss of earnings and loss of earning capacity as set out at paragraph 11 above.
 - d. Special damages of Kshs. 17,311,148.30 as pleaded together with interest.
 - e. Interest on (a), (b), (c) and (d) above at such rate and for such period as this Honorable Court may deem fit to grant.
 - f. Costs of this suit.
 - g. Any other relief the court deems fit to grant.

Statement of Defence

11. The statement of defense dated 22nd January, 2018 and filed on court on 23rd January,2018, the Defendants admitted that an accident occurred on 18/5/2016 but denied the allegations that the same was as a result of carelessness, recklessness and/or negligence on the part of the 2nd Defendant as alleged. The defendant further denied the particulars of negligence as pleaded and enumerated at Paragraph 7 (a-k) of the Plaintiff.
12. The defendant averred that the accident was caused and/or substantially contributed to by the negligence of the plaintiff in the manner that he drove, controlled and/or managed motor vehicle registration number KBL 933X. The Defendants denied the particulars of injuries, the particulars of special damages, the claim for further costs, the claim for future medical care, nursing care and quadriplegic equipment as alleged in the enumerated paragraphs of the Plaintiff
13. Defendant further denied the allegations that the Plaintiff is unable to engage in gainful employment, the claims for loss of earnings and/or future earnings or earning capacity together with the claim for future nursing care as alleged.
14. It was averred that the Plaintiff was a beneficiary of a private medical insurance cover and is a member of the National Health Insurance Fund, which paid for and continues to cater for his medical expenses; further that the Plaintiff benefited from fundraising initiatives and as such the claim for special damages as made in the plaintiff, if made would amount to unjust enrichment.
15. It was averred that the Plaintiff could still engage in gainful employment by virtue of the fact that his training as accountant as alleged in the plaintiff (if proved) can still be done. Contending that the Plaintiff has not been dismissed from his employment and can still finalize his course work.



16. The Defendants averred that the suit herein is bad in law, fatally defective and should be struck out and that they will raise Preliminary Objection on point of law and seek to strike out the suit.
17. The defendants prayed that the Plaintiff's suit be dismissed with costs.

Reply to the Defendants Statement of Defence

18. The Plaintiff in his reply to the defence dated 19th March, 2018 and filed in court on 23rd March 2018, wherein he reiterated the contents of the plaint and denied the content on the said defence that the accident occurred as a result of contributory negligence on his part as particularized or in any other manner whatsoever.
19. The Plaintiff further reiterated the contents of paragraph 9, 10, 11, 12, 13, 14 and 15 of its plaint in answer to paragraph 6 and 7 of the Statement of Defence and in reply to paragraph 9 and 10 of the statement of defence, the Plaintiff echoed his averments in paragraph 16 of the Plaint.
20. He averred that the instant suit is competent and proper in law contrary to the Defendant's averment. The Plaintiff prayed that the Defendants' Statement of Defence be struck out and that judgment be entered as prayed in the Plaint.

Dismissal of the suit for want of Prosecution

21. On 21st February, 2019, the matter was set for hearing and the counsel for the Defendant submitted that no appearance for the Plaintiff and asked court to dismiss the matter for lack of prosecution. This Honorable Court found that as there was no appearance for Plaintiff and as the defendant did not admit any of the claim the suit was dismissed with costs.

Chamber Summons

22. Vide a Chamber Summons and supporting affidavit filed in court on 26th February 2019, the Applicant sought orders issued by G.V Odunga on 21st February, 2019 dismissing the Plaintiff's suit be set aside and that the Honorable court be pleased to extend time within which the Plaintiff herein may set the suit for hearing.
23. The grounds upon which the application was premised were on the body of the said application.

Grounds Of Opposition

24. The Respondent in its grounds of opposition dated 11th June, 2019 and filed in court on 12th June, 2019, wherein, the Defendant opposed the Chamber Summons Applications to be devoid of substance and that the Applicant has not satisfied the legal principle that guides the court in considering an application for reinstatement of dismissed suits.
25. The Application was canvassed by written submissions.

Court's Ruling On The Application

26. Vide this Court's Ruling dated 6th May, 2020, the Plaintiff's application dated 18/1/2019 was allowed on condition that the Plaintiff pays the Defendant throw away costs of Kshs. 20,000/- within fourteen (14) days from the date hereof failing to which the orders setting aside the dismissal shall lapse.



Application To Amend The Plaintiff

27. In the Court records, there was an application that the Plaintiff be granted leave to amend his plaintiff and further list of documents and witness statement. This court on 8th October,2020 allowed the plaintiff to file and serve an amended Plaintiff within 7 days and the defendant was granted 14 days to file an amended defence if need be.

Amended Plaintiff

28. By Amended Plaintiff dated 15th October,2020 and filed in court on 19th October,2020, averred that at all material time herein the 1st Defendant was the registered owner of motor vehicle registration number KBA 731T.
29. It was averred that at all times material to this suit, the said motor vehicle was being driven by the 2nd Defendant being authorized driver, servant and/or agent of the 1st Defendant acting within the scope of his employment or authority and for the benefit of the 1st Defendant and the 1st Defendant is hereby vicariously liable for the acts of the Defendant.
30. It was further averred that on the 28th day of May 2016, at around 6:00a.m. the plaintiff was lawfully and carefully driving his motor vehicle registration number KBL 933X along Nairobi Mombasa Road coming from Nairobi heading to Machakos when at Namanga interchange, where the dual carriage begins, the 2nd Defendant, so carelessly, recklessly and negligently drove, managed and/or controlled motor vehicle registration number KBA 731T that he took the wrong lane along the said road.
31. The Plaintiff averred that by reason of the said carelessness, recklessness and negligence and whilst driving in the opposite direction to the Plaintiff, the 2nd Defendant drove, caused and/or permitted Motor Vehicle Registration Number KBT 731T to so violently collide with the Plaintiff's Motor Vehicle Registration Number KBL 933X. The particulars of negligence are on the face of the Plaintiff.
32. Contending that by reason of the aforesaid matters, he suffered loss and damage for which he holds the Defendants liable.
33. Particulars of Injuries were as follows;
- a. Bilateral closed fracture shaft of femur
 - b. Open right patella fracture with rupture of patellar tendon
 - c. Head injury with intra cerebral bleed
 - d. Multiple cut wound on the face
 - e. Myositic bone of both hips
 - f. Gross heterotopic ossification and fusion of both hips, knee and right elbow
 - g. 100% Paralysis
34. Particulars of special damage was as follows:
- a. Medical Report..... Kshs. 4,000.00
 - b. Hospital expenses..... Kshs. 16,311,264.00
 - c. Car hire expenses..... Kshs. 116,860.00



- d. Cost of diapers..... Kshs. 78,979.00
 - e. Costs of dressing..... Kshs. 265,050.00
 - f. Cost of physiotherapy..... Kshs. 159,200.00
 - g. Doctors' consultation charges..... Kshs. 70,000.00
 - h. Cost of medication..... Kshs. 261,200.30
 - i. Ripple mattress..... Kshs. 25,000,00
 - j. Wheel chair..... Kshs. 9,000,00
 - k. Blender..... Kshs. 4,595.00
 - l. Geratherm..... Kshs. 6,000.00
- Total. Kshs. 17,311,148.30

35. The plaintiff stated that subsequent to filing of the instant suit on the 22nd December, 2017, the Plaintiff sought further medical attention in India and as a result thereof incurred expenses as tabulated hereunder.

- a. Accommodation...485,000 Rupees* Kshs. 641,200.00.
 - b. Cost of physiotherapy.....189,000 Rupees* Kshs. 264,600.00.
 - c. Costs of examinations and tests 107,749 Rupees* Kshs. 150,848.60.
 - d. Costs of medication..... 146,165 Rupees* Kshs. 204,631.00.
 - e. Travelling expenses for three individuals to be produced before trial.
- Total..... 900,914 Rupees* Kshs. 1,261,279.00
- the average exchange rate for 1 Indian Rupee is 1.40 Kenya shillings.

36. The Plaintiff contended that by reason of the nature of injuries sustained by the Plaintiff, the Plaintiff shall require continued medical care for life and claims for provision of future medical and nursing care together with quadriplegic equipment as follows:

- i. Cost of physiotherapy at Kshs. 3,000 per session for life.
- ii. Cost of adult diapers @ 4 daily, uses 4 dozens @ 3590, total monthly cost is Kshs. 14,360.00 for life.
- iii. Cost of Electrical wheelchair at Kshs. 250,000.00.
- iv. Cost of drugs and relevant medication at a cost of Kshs. 10,000 a month for life.
- v. Cost of hospital attendance and check-ups at Kshs 2,500.00 per visit, 4 visits a month for life.
- vi. Cost of hydraulic water bed and mattresses at Kshs. 450,000.00
- vii. Future surgeries at an estimated costs of US \$ 5,000 to \$ 6,000 dollars per joint.
- viii. Dressing of sacral pressure sores @ monthly costs of Kshs. 4,000.00

37. The Plaintiff further averred that the Plaintiff now aged 28 years was prior to the accident the subject of this suit, employed by Ketraco Limited as an Accounts Assistant at a net salary of 153,219.00 per



- month. He had a Bachelor of Commerce Degree and had completed and passed the final Examination of Certified Public Accountants. He was also pursuing his Master's Degree at Kenyatta University and had already finalized the course work and was in the process of writing his thesis.
38. Averring that the injuries sustained, the Plaintiff has not been able and shall not be able to engage in gainful employment. The Plaintiff thus claimed:
- a. Loss of earnings from August 2017 until judgment hereof at Kshs 159,259.00 a month.
 - b. Loss of future earnings and/or earning capacity at Kshs. 159,259.00 per month.
39. It was further averred that by the injuries sustained, Plaintiff will be unable to look after himself and will require a permanent assistance and care for the rest of his life for which he now claimed from the Defendants as follows:
- a. Sum of already expended for nursing as at the hearing of this suit computed at a monthly expenditure of Kshs. 20,000.00.
 - b. Future cost of personal assistant at a monthly cost of Kshs 20,000.00
 - c. Adequate provision for hire of nursing assistance for the rest of his life.
40. Averring that by reason of the injuries sustained, the Plaintiff is unable to enjoy consortium with their spouse due to injuries sustained from the accident.
41. The Plaintiff prayed for judgment against the Defendants jointly and severally/or severally for:
- a. General Damages for pain & suffering, loss of amenities and loss of consortium together with interest thereon.
 - b. Damages for quadriplegic equipment, future medical and hospitalization and drugs and nursing as set out in paragraph 9 & 15 above.
 - c. Special Damages for loss of earnings and loss of earning capacity as set out at paragraph 11 above.
 - d. Special Damages of Kshs. 17,311,148.30 as pleaded in paragraph 10.A above together with interests.
 - e. Special Damages of Kshs. 1,261,259.00 as pleaded in paragraph 10.B above together with interests.
 - f. Interest on (a), (b), (c) and (d) above at such rate and for such period as this Honorable Court may deem fit to grant.
 - g. Costs of this suit.
 - h. Any other relief the court deems fit to grant.

Amended Statement Of Defence

42. In the statement of defence dated 6th November,2020 and filed in court on 10th November,2020 admitting that an accident occurred on 28th May,2016 but denied the allegations that the same was as a result of carelessness, recklessness and/or negligence on the part of the 2nd Defendant as alleged at paragraph 6 and 7 of the amended plaint or at all.



43. The Defendant denied the particulars of negligence as pleaded and enumerated at Paragraph 7 (a-k) of the Amended Plaintiff.
44. Defendant further averred that the accident was caused and/or substantially contributed to by the negligence of the Plaintiff in the manner that he drove, controlled and/or managed motor vehicle registration number KBL 933X. The Defendant denied the particulars of injuries, the particulars of special damages, the claim for costs, the claim for future medical care, nursing care and quadriplegic equipment as alleged pleaded and enumerated at paragraphs 9, 10A, 11 and 12 of the Amended Plaintiff.
45. Defendants denied the particulars of further expenses incurred in India and that the average exchange rate for 1 Indian Rupee is 1.40 Kenya shilling as alleged, pleaded and enumerated at paragraph 10B of the Amended Plaintiff.
46. The Defendant denied the allegations that the Plaintiff was unable to engage in gainful employment, the claims for loss of earnings and or future earnings or earning capacity together with the claim for future nursing care, employment of a personal assistant and allegations of the Plaintiff's inability to enjoy consortium with his spouse as alleged and pleaded.
47. The Defendant averred that:
 - a. The Plaintiff was a beneficiary of a private medical insurance cover and is a member of the National Health Insurance Fund, which paid for and continues to cater for his medical expenses; further, the Plaintiff benefited from fundraising initiatives and as such the claim for special damages as made at Paragraphs 10A and 10B of the Amended Plaintiff, if made, would amount to unjust enrichment.
 - b. The Plaintiff can still engage in gainful employment by virtue of the fact that his training as an accountant as alleged at paragraph 13 of the Amended Plaintiff, (if proved) can still be done. The Defendants also avers that the Plaintiff has not been dismissed from his employment and can still finalize his course work.
 - c. The Plaintiff is under a legal duty to mitigate losses (if any).
48. Defendants averred that the suit herein is bad in law, fatally defective and should be struck out and that the Defendants shall at an appropriate time raise a preliminary objection on a point of law and seek to strike out the suit.
49. The Defendants prayed that the Plaintiff's suit be dismissed with costs.

Hearing

Plaintiff's Case

The hearing commenced before Hon. Justice D.K. Kemei as follows;

50. PW1 was No 68609 CPL Zephania Amdany. He testified that he had a police abstract dated 6-12-2016 over OB No. 3 of 28/5/2016 in regard to one Shadrack Mutunga who was involved in a road traffic accident on 28/5/2016 while being a driver of motor vehicle registration KBL 933X make Toyota 1st. He testified that Shadrack was driving from Nairobi towards Machakos general direction at about 5:30 a.m. PW1 did not however visit the scene but other officers who have since been transferred. PW1 was only in court to produce the Police abstract which was issued, PEXH. 1- Police abstract dated 6/12/2016. Testifying that the investigating officer was PC Mwangangi who visited the scene and blamed driver of motor vehicle KBA 731T Isuzu bus and was captured in the police abstract.



51. In cross-examination, it was the testimony of PW1 that his duty was to produce the abstract and did not take part in the preparation of the police abstract. PW1 did not know why the matter was referred to insurance. He told the court that PC Mwangangi made the decision to blame the driver of the other vehicle. PW1 has been a police officer for the last twenty years and been at Athi River for one and half years. He testified further that the accident led to serious injuries on the parties and that it is unusual to refer matter to insurance when there is a serious injury and the offending driver is taken before the traffic court. According to PW1, he would have charged the driver with traffic offence and that there is no problem with the abstract. He told the court that it is not possible that the Plaintiff herein was to blame.
52. In re-examination, it was testified that driver of motor vehicle KBA 731T was blamed for the accident and that the police are not precluded from pursuing to blame other parties even if there has been a referral to insurance. Testifying that the investigating officer established who is at fault.
53. PW2 was Francis Kyalo Kitunda. He testified that he recorded his statement and wished to adopt in his evidence.

The written statement he stated that he worked for Delta Company Limited. On 28/5/2016 he was walking along Nairobi -Mombasa Road heading to work. He noted the school bus had taken the wrong lane and was being driven on the wrong side of the road at Namanga Interchange along Nairobi-Mombasa Road. There were other vehicles being driven from the direction of Nairobi headed to Machakos. These vehicles were flashing him with their headlights to signal to him that he was driving on the wrong side of the road.

He shouted loudly at the driver, before he finished, he saw the bus collide head-on with an oncoming car being driven on the road. The saloon car tried to swerve and brake but it was in vain, the bus also attempted to brake but the distance was too short. The vehicles collided head-on. He rushed to the point of collision. Upon collision the bus ran over the car.

The saloon car had only a male driver, he was trapped in the vehicle he was bleeding and was quiet. Many people came to the scene and they shook him to see if he was alive and he groaned, on discovering he was alive they pulled him out of the wreckage and put him in a Good Samaritan's vehicle and he was rushed to hospital.

The bus had the name St Catherine Girls' High School Machakos written on the side.

54. In cross examination, it was the testimony of PW2 that he was employed in the year 2009 and worked for his employer near the scene. He recalled the year when the dual carriage way and interchange was officially opened to motorists. Testifying that in 2009 there was only one road (single). Further PW2 testified that in 2016 the dual carriage was still new and that if one is coming from Mombasa direction the reaching the interchange he has to move to the left so as to join the dual carriage way. PW2 saw the motorist from Mombasa direction irregularly joining the Nairobi direction instead of moving to the left. He maintained there is no problem at the interchange and that the bus moved into the opposite road and the accident took place. Testifying that there were headlights and saw the bus's headlights even though the bus was ahead of him. PW2 testified that he recalls he saw the bus heading in his direction as he walked towards Machakos direction. PW2 had already passed the Kitengela bridge. PW2 was from Mlolongo direction and at a distance of 100 meters from where the bus was and that the accident took place about ten meters from where he was. That there was a head on collision. He testified that both vehicles were being driven at high speed and he was not injured. PW2 maintained that he was at the scene. He did not report to the police, but assisted the victim. PW2 did not see the bus moving off the road. He had both vehicle brakes being applied by the drivers.



55. In re-examination, he told the trial court that the accident took place around 5:30 a.m. and that the saloon car was on its rightful lane while the bus should have been on the other side of the road. Testifying that at that of the morning there are many vehicles ferrying workers.
56. PW3 was Shadrack Mwasya Mutunga. He told the Trial Court that he is an Accountant by profession and has a Masters degree in Commerce and also Certified Public Accountant. He produced his academic certificates. PEXH 2A- Degree Certificate, 2B- Kasneb Certificate, 2C- Letters of Admission for Maters Degree Program (All contained in the list of documents No. 11-13, dated 23/11/2017). PW3 testified that he wished to produce the other documents as exhibits as listed in his list 5, 10, 17, 18, 19, 20. PEXH 3A- F (Exhibits listed as 5, 10, 17, 18, 19, 20 in the list dated 23/11/2017). He told court that he was /is employed by Ketraco as an Accountant. That he is the Plaintiff in this matter. He sustained injuries in an accident where he was driving KBN 933X and was hit by motor vehicle KBA 731T. According to PW3, the scene was at the Namanga Road Interchange. He was heading to Mua Hills. It happened at 5:30 a.m. it was a head on collision. Testifying that the other driver was driving on his lane. The distance was 100 meters and he tried to swerve. He was rushed to Shalom hospital, he was later transferred to Aga Khan Hospital. An emergency surgery was done. PW3 was in a coma for about three months. He incurred hospital expenses. He had the receipts as proof: PEXH 4- the receipts of payment from Aga Khan Hospital. PW3 paid a total sum of Kshs. 8,357,192/=.
57. He owes the Hospital a sum of Kshs. 7,731,572/= as at 26/1/2021. PEXH 5- A hospital (in patient) final bill dated 26/1/2021 from Aga Khan Hospital. PW3 was discharged from Aga Khan on 26/9/2016 and later he went to India for further treatment on corrective surgery. Opining that the same was done at cost. That he has the receipts of payment; PEXH 6-15 receipts and bundle of invoices from Forties hospital in India. PW3 underwent physiotherapy by Dr. Subbash Chanda and he produced the receipts. PEXH 7-9 receipts of payment issued by Dr. Subbash Chanda. While in India he stayed at Ashok house. He produced the accommodation expenses receipts. PEXH 8-9 receipts of payments from Ashok House, several other expenses were incurred in India. He produced some prescriptions by the doctors. PEXH 9-A bundle of Doctor's prescriptions. He produced bundles of receipts from Snowbell Medicos. PEXH 10-A bundle of 60 receipts from Snowbell Medicos and Jai Kacha Mai. PW3 testified further that he returned to Kenya from India in November,2020. He had also incurred other expenses he produced the receipts. PEXH 11-36 receipts and 24 invoices from Medilink Africa. He was accompanied to India by his brother and cousin, a flight was booked.
58. That he now has a personal assistant who washes and cleans him at a salary of Kshs. 20,000/= per month. The Physiotherapist visits him at home to conduct the Physiotherapy at Kshs. 3,000/= per session. PW3 was married before the accident and that he was earning Kshs. 153,000/= per month before the accident. That the accident has affected his career since his Masters' degree program was cut short. PW3 told the court that he is now unable to get some promotion at the work place and that he requires a lot of things at home such as an electric wheelchair, diapers, doctor's visits, physiotherapy mattress. He produced receipts. PEXH 12-A & B sales invoice and delivery notes.
59. He blamed the driver of motor vehicle KBA 731T because he was driving on the wrong lane. The vehicle is being owned by St. Catherine School Ltd. He produced a search of motor vehicle (PEXH 3 C). He prayed for compensation for the expenses incurred as well as the future medical expenses as pleaded. PW3 also wants general damages for injuries loss of consortium as well as special damages pleaded. He also sought costs of the suit. That he had reported the matter to police station. He produced the P3 form PEXH 13- P3 form. While at Aga Khan Hospital and he was attended to by Dr. Musebe, Dr. Bondo who issued medical reports. He was also examined by Dr. Madhiwala who prepared a report MFI 14- Medical report by Dr. George K. Museve dated 28/11/2016. MFI



15- Medical report by Dr. George Museve dated 18/7/2017, MFI 16- Medical report by Dr. Ashwan Madhiwala dated 25/9/2017.

60. In cross-examination, it was the testimony PW3 that he applied his brakes but his vehicle swerved away. He saw the bus at a distance of 10 meters away. He could not remember on which side of the road he swerved to. His lights were on but he cannot remember the distance the lights could illuminate. He told the court that the lights could illuminate even at a distance of 5 meters and that there was a truck ahead of him and he was overtaking it. He knows he is supposed to keep a safe distance. According to PW3 he did not accept that he caused or contributed to the accident. He cannot recall whether the bus driver flushed lights. He did not see anybody along the road and he attempted to swerve immediately and that prior he could not see any challenge on the new design of the road. He still works for Ketraco and that he does not know his current salary. He told the trial court that he is not aware that he is due to retire in 2050. PW3 did not agree that his salary up to 2050 should be sufficient for his medication. PW3 confirmed that his employer has not terminated his employment and he still receives his salary. Testifying that he is a beneficiary of a medical scheme by Ketraco and is still a member. He told court that the medical scheme guaranteed medication by virtue of his employment. PW3 could not tell for how long he will work for Ketraco. He maintained that Ketraco did not pay his medical bills from Aga Khan. Further he confirmed that Ketraco paid some of the Aga Khan bills. Testifying that the Defendant and the court is able to know the amount Ketraco settled. PW3 had a medical card with him which enabled him secure admission at Aga Khan Hospital. PW3 is also a member of the NHIF where his employer still contributes thereto. He testified that he does not enjoy any benefits by virtue of his membership with NHIF and could not tell how a credit note of about Kshs. 900,000/= found its way in his hospital bill at Aga Khan. He told the Trial Court that he does not agree that his employer and NHIF paid the credit of Kshs. 900,000/= to Aga Khan and he is not aware that the medical provider or NHIF caters for overseas medication. PW3 did not seek from NHIF and medical provider to settle his overseas medical bills. He had not presented the bills to the insurer. According to him the Defendant should not be made to pay when he can get refund from the insurers. PW3 did not know that NHIF can settle the physiotherapy charges. It was his testimony that the treatment in India has not worked well and that he has received the elbow replacement and physiotherapy. He told the Trial Court that he can still perform his duties as an Accountant and he has not been seriously incapacitated.
61. In re-examination, he told the Trial Court that the accident took place at Namanga interchange and the bus had moved onto his lane leaving its left lane. Testifying that collision took place on his correct lane. He did not expect to meet a vehicle coming his way and heading in the opposite direction. It was a head on collision. According to PW3, there grills on either side of the road. His car was trapped under the bus and he was assisted by good Samaritans. PW3's employer wrote a letter of employment which provided the limit of outpatient cover and that the medical provider paid as per his limit. PW3 incurs Kshs. 36,000/= per month on Physiotherapy. He was at home for four months without paying the salary which has not been sorted out. Testifying that prior to the accident he used to serve in the cash office and also went for field work. PW3 used to receive salary increment yearly.
62. PW4 was Dr. George A. Musebe. He testified that he met the Plaintiff at Aga Khan Hospital in May 2016. Their relationship was professional in nature. PW4 examined him subsequently in the course of his treatment he did his reports. The first report dated 28/11/2016 addressed to the Plaintiff's employer. The second report was to his lawyer dated 17/8/2017 and not 17/7/2017 as earlier indicated by him. PW4 established that the Plaintiff sustained 100% permanent disability. Plaintiff lost use of his limbs and is not able to walk and is now wheelchair bound. PW4 produced the two medical reports. PEXH 14- medical report dated 28/11/2016, PEXH 15 medical report dated 18/7/2017. PW4 established that the Plaintiff sustained 100% permanent disability. He lost use of his limbs and is not able to walk and is now on the wheelchair bound. He produced the Reports.



63. In cross-examination, it was his testimony that he had seen his second report and it was two years after the incident and it showed the Plaintiff had recovered. Testifying that mental capacity was alright as patient recovered while the mobility was 100% disability. PW4 had seen page 4 of his report on the grading of 0-5 muscle power and which he had given the grades as per the limbs. It was his testimony that patient can function well on the upper right limb regarding muscle power. According to PW4 the patient had been walking previously and in the present state he is 100% incapacitated and that he had no assessed Plaintiff after the 18/7/2017. PW4 could not tell if the Plaintiff has undergone further treatment after 19/7/2017.
64. In re- examination, it was PW4's testimony that mental incapacity can be experienced as the patient is Psychologically affected.
65. PW5 was Dr. Ashwin Madhiwala. He testified that his report is that on 25/9/2017 he saw the Plaintiff herein who was then aged 28 years. That the Plaintiff had been involved in a road accident along Mombasa road. He was then on a wheelchair and passing urine & stool in a diaper. Testifying that the Plaintiff could not use right hand. He established that he suffered 100% disability. PW5 recommended that Plaintiff undergoes further surgery in India. According to PW5 Plaintiff was to undergo about six surgeries with each costing 5000-6000 dollars. He also needed other intervention such as nursing, wheelchair, diapers, Physiotherapy, drugs for pain and vitamins. PW5 produced his report. PEXH 16-Medical report dated 25/9/2017. PW5 paid Kshs. 12,000/= for his attendance in court.
66. In cross-examination, it was his testimony that the patient had a catheter for passing urine and there were diapers. He established that there was incontinence regarding stool and urine and he was briefed by relatives. PW5 recommended for further surgeries in India and that the patient went to India where surgery was done but it did not work out well. Testifying that it is not true that the recommended surgeries were not needed since they needed to try any means. That he recommended for a bed and electrical wheelchair. PW5 told court that if the electrical wheelchair then the costs of house help will go down. PW5 recommended diapers and physiotherapy and that physiotherapy is easily available in public hospitals. It was his testimony that NHIF caters for costs of physiotherapy and hence the eventual costs would come down. That NHIF caters for overseas surgeries to some extent. PW5 had not seen surgeries done but would recommend them to be done in Kenya.
67. In re-examination, he told court that he recommended for surgery in India and further he recommended for electrical wheelchair and also patient needs nursing care.
68. PW6 was Julius Mutunga Ndasyo. He told court that the Plaintiff herein is his son and he wished to rely on his witness statement dated 23/11/2017 in the evidence herein. In the Statement, the father of the Plaintiff narrated the events leading to the son being incapacitated. PW6 stated that his son's condition made him leave his home and stay with him for care-giving and assistance. The doctors informed him of his son's required continuous care for life and future corrective surgery and nursing care with quadriplegic equipment. He spent his savings and retirement benefits on paying son's medical bills and needs.
69. According to PW6 he incurred expenses regarding the Plaintiff's admission and treatment at Aga Khan hospital. Testifying that at the time of discharge the sum incurred was Kshs. 16,745,264/=. The Plaintiff had been subscribed to NHIF which paid Kshs. 468,000/= When the Plaintiff was in ICU and another Kshs. 188,000/= while HDU thus leaving a balance of Kshs 16,088,764. PW6 had so far paid Kshs 8,357,192/=. The amount due now is Kshs. 7,731,572/=. Testifying that they went to India for further treatment where they stayed for nine months. They incurred other expenses on private doctors in the sum of Kshs. 2,046,000/=. He testified that while in India, more expenses were incurred such as Kshs. 2,228,069/= (admission). PW6 gave his title deed to Aga Khan Hospital as security or



guarantee of payment which is still being held there and will be released upon clearance of the fees. PW6 wanted the court to assist him in clearing the pending bills and also compensation for the injuries. PW6 produced the bills from Aga Khan Hospital. PEXH 17- Medical report dated 27/9/2016, PEXH 18- A bundles of inpatient summary bills/receipt and PEXH 19-A a guarantee of payment dated 23/9/2016.

70. In cross examination, PW6 told court that he has cleared some of the bills and that the Plaintiff had been employed and had an insurance cover and cannot recall the identity of the insurance company. Testifying that the Plaintiff's employer (Ketraco) through the insurance paid a sum of Kshs. 1,500,000/= and that the insurer did not cater for any bills incurred in India and likewise NHIF. He testified that he is not aware that NHIF caters for overseas Medical expenses, Ketraco did not make any payments. PW6 was forced to sell some of his properties and also used up his pension and savings. PW6 has never conducted fund raising for the bill. Testifying that the Plaintiff is still in employment to date. He told trial court that his son is married. That part of the 8 million shillings paid came from NHIF insurer and other sources from him. The plaintiff's insurance cover limit was 1,500,000/-
71. In re-examination, it was testified that the plaintiff has been transferred from being an accountant to storekeeper and that NHIF only paid a portion of the monies.

The Defence Case

72. DW1 was Jackson Muasya Kavuse. Testified that he was the school bus driver and he had worked for 25 years. DW1 wished to adopt his witness statement filed on 21/01/2019 in his evidence. Testifying that the accident took place around 5:45 a.m. and it was still dark. He had his full lights on. DW1 was at Athi River Interchange highway and suddenly realized that he had joined the wrong lane. DW1 had just moved a few meters and stopped so as to establish the correct route as there were diversions. He flashed his headlights to the oncoming vehicle but it was at high speed and came and hit his vehicle. DW1 and the student passengers were not injured at all since the bus was not in motion. Testifying that the Plaintiff was driving then at high speed. He told court that the Plaintiff ought to have seen his vehicle from a far. DW1 was not charged with a traffic offence. He blamed the Plaintiff or his driver for causing the accident due to over speeding and careless and had he been careful the accident could have been avoided.
73. In cross-examination, it was DW1's testimony that he had driven for 25 years and had been using the route in the past. DW1 was travelling from Kaani to Limuru Girls High School. That he was on the left side as he moved towards Nairobi and mistakenly drove onto the right lane. He told the court that the accident took place on the interchange and he had moved for about 100 meters only to realize that he had entered onto a wrong lane. DW1 stopped the bus in the middle of the road and that the small car was overtaking a certain lorry and he was perfectly in order to do so.
74. In re-examination, he told court that the road had no signs as one approached the interchange.
75. On 12/10/2021, this Court took over the hearing of the matter at this stage. Typed Proceedings were availed to parties and by virtue of Order 18 Rule 8 CPR 2010 the hearing proceeded from where the Trial Court reached.
76. DW2 was Dr. Wambugu. He testified that he is a consultant surgeon. He has undergraduate MBC from U.O.N and Masters' Degree in Surgery from U.o.N and Diploma in Trauma in U.O.N. He has been in medical practice since 1987 and is Lecturer at UON since 1995. DW2 examined Shadrack Mutunga and prepared the Medical Report. DW2 examined him on 14/7/2017 and found he had been involved in a road traffic accident when a vehicle he drove collided with another. That Shadrack sustained head injuries associated with loss of consciousness. DW2 testified that the patient had a cut wound on the right eyelid and fracture of right elbow joint and fracture of both femur bones. Testifying



that he had a fracture Patella bone (knee cap bone) and the leg down was ruptured. He testified that various investigations confirmed the injuries. Testifying further that the patient had intracerebral hemorrhage with brain oedema and that the patient was managed as an inpatient upto 22/9/2016 and was initially in ICU over prolonged duration of time. The fracture of the leg was managed by open induction and fixation with metal caps. It was DW2's testimony that the head injury was managed conservatively. According to DW2, at one stage patient went into renal failure which necessitated dialysis. Patient also had multiple surgical procedures. He told the court that patient had preoperative X-rays which revealed excessive bone deposition across both hip joints, right elbow and the right knee. He was still attending physiotherapy sessions. When he was presented to DW2 he was wheelchair bound he complained of stiffness on both hip joint and on the right elbow and knee joints. Patient had scars. No fits concussions reported. DW2 examined him on the head and was fully conscious and oriented, speech was sluggish. His memory was normal. He had scars just above the right eyebrow and he had no neurological deficits.

77. Further, observation;

Neck- Seen ulterior aspect which had been made by surgeons during his stay in ICU to allow intubation.

Lower-Limbs- There were scars on both thighs it was testified that scar anterior aspect- which had been made by surgeons during his stay at ICU to allow into bottom. That in lower limbs there were scars on both thighs across the knee. Both hip joints were grossly stiff as was the quadriceps of the thighs were wasted. Testifying that right upper limb had the elbow joint was glossy stiff and muscle of the hand were wasted. According to DW2 the patient was not in continent of stool and urine. DW2's opinion- this injury was consistent with those due to blunt trauma as may have occurred during the said accident. Patient had sustained neural skeletal and soft tissue injuries. His condition was further complicated by the renal failure and prolonged ICU care. That the patient was wheelchair bound and is unlikely to ever resume his normal duty as an Assistant Accountant. DW2 therefore awarded patient 100% degree of permanent incapacitation with the opinion he would need an able helper to achieve his daily living activities at a current minimum wage of Kshs. 15,000/= for life.

That a provision should be made to replace his wheelchair at least once every 3-4 years consideration of the terrain which he lives in. according to DW2 the costs of light weight foldable wheelchair is Kshs. 65,000/=.

DW2 told the court that Musya is not incontinent of stool and/or urine and hence no provision should be made for diapers. It was further the opinion of DW2 that he did not foresee any need for further surgery as his current gross stiffness of the joints affected and emanates from an abnormal bone healing reaction. That the fists joints are unlikely to improve. There is no need for a paraplegic bed and mattress as Mr. Muasya is not paraplegic neither does he have pressure sores. His sensation is intact and he is able to move himself although with difficulty.

He stated that the patient still receive 5 sessions per week of physiotherapy and this would need to be continued indefinitely. The cost per session is at Kshs. 2,500/- at Aga Khan Hospital where he attends. Testifying that Muasya has no open wounds and in DW2's opinion full healing is expectant and one cannot for sure give a deadline. DW2 produced the medical report of 14/7/2017- Defence Exhibit1. DW2 told court that the physiotherapy is to improve his mobility and he will be able to move with time. Muasya is not paraplegic. Testifying that paraplegic is the lower limbs when they are paralyzed and quadriplegic is when both the upper and lower limbs are paralyzed. Testifying that Muasya does not suffer any of the above. That this is was informed by his examination that he could move although with difficulty.



DW2 ruled out the need for further surgeries and if undertaken they would be electric surgeries. DW2 did not address the sexual functions in his examination and he never raised difficulty in copulation. That in view of the stiffness across within hip joints he would have to be innovative with his spouse on how they achieve that activity.

78. In cross-examination, DW2 told Trial Court that Muasya was 100% incapacitated and he is unlikely to ever resume his normal duties. DW2 had no opportunity to examine him since 2017 and that Muasya has the right to seek 2nd medical opinion and may include surgery. Testifying that the thigh muscle has thinned out and gross stiffness and will affect his ability to walk. Mr. Muasya cannot retain mobility at the time of examination he was not mobile but on a wheelchair. According to DW2, Muasya was using lower limbs but he was not paraplegic and he has not examined him since 2017. He is not aware of any complication that arose after his examination. DW2 observed that fused joints noted alive are unlikely to improve in spite of reconstructive surgery. That if a patient is wheelchair bound one can attain pressure so Muasya can obtain and have pressure sores but at the time when on the wheelchair he could move albeit fearfully.
79. DW2 told court that Muasya was in need of Physiotherapy sessions to continue indefinitely and a wheelchair would aid him in mobility. That upper limbs muscles were wasted and he had difficulties and left upper limb normal and DW2 agreed automatic wheelchair and are user-friendly for patients who are paraplegic. There is a challenge to have a wheelchair to be pushed with one hand and DW2 had proposed a helper.
80. In re-examination, he testified that he examined Muasya and he expected improvements as he received continuous treatment. It will be unusual to have pressure sores they occur when they have sensation in paraplegic situation and can burn less even with minimal releasing. He testified further that when one has sensation like Muasya has the moment he sits for long and feels pain he would move or have his able assistant would be able to help him.
81. The matter was canvassed by written submissions.

DIVISION -Submissions

SUBDIVISION - Plaintiff's Submissions

PARA 82.

The Plaintiff in his submissions dated 8th September,2022 and filed in Court on 9th September,2022, counsel for the Plaintiff raised the following issues

SUBPARA a.

Liability

SUBPARA b.

quantum

PARA 83.

As to liability, counsel relied on the case of Palace Investment Ltd Vs Geoffrey Kariuki Mwenda & Another [2015] eKLR, and submitted that the occurrence of the accident was thus confirmed and it was the finding that according to the police abstract that the motor vehicle KBA 731 T was to blame for causing the accident. Counsel relied on the testimony of PW2 and DW1 and submitted that there was no way that the plaintiff driver of motor vehicle KBL 933X could have reasonably expected to encounter a KBA 731T that was driven on the wrong road and prayed that the court finds the Defendants 100% liable for causing the accident.



PARA 84.

On quantum, counsel submitted that Plaintiff sustained physical injuries as follows:

SUBPARA a.

Bilateral closed fracture shaft of femur.

SUBPARA b.

Open right patella fracture with rapture of patella tendon.

SUBPARA c.

Head injury with intra cerebral bleeding.

SUBPARA d.

Multiple cut wound of the face.

SUBPARA e.

Myositic bone of both the hips.

SUBPARA f.

Gross heterotopic ossification and fusion of both hips, knee and right elbow.

SUBPARA g.

100% paralysis.

PARA 85.

Submitting that reports produced Doctors PW4 and PW5 marked PEXH 14 and PEXH 15 are in agreement that the Plaintiff suffered 100% incapacitation and the Plaintiff's mobility was severely compromised.

PARA 86.

It was contended that an award of Kshs. 6,000,000/= would be adequate as general damages for pain and suffering. To buttress the aforementioned, counsel relied on the cases of Alex Otieno Amolo & Another v Hayer Bishan Singh & Sons Limited [2016] eKlr, Simon Taveta v Mercy Mutitu Njeru [2014] eKlr and Eva Mueni Wambugu v Simon Peter Githae & Another [2012] eKlr

PARA 87.

As to loss of consortium, it was submitted that the testimony of both Dr. George Museve (PW4) and Dr. Ashwin Madhiwala (PW5) that the Plaintiff is quadriplegic for reasons that he has lost the use of his limbs and is thus wheel bound. Submitting that the Plaintiff was a young Virile 27-year-old newly married with one child. Submitting that due to the injuries he is unable to fulfill his and enjoy his connubial obligations. To buttress this reliance was placed on the case of P B S & Another v Archdiocese of Nairobi Kenya Registered Trustees & 2 Others [2016] eKLR.

PARA 88.

It was contended that the Plaintiff had suffered loss and damage amount to Kshs. 17,311,148/= , contending further that subsequent to filing of the suit in 22/12/2017 the Plaintiff sought further medical attention in India and as result thereof incurred further expenses totaling to an additional Kshs. 1,261,279.00.

PARA 89.



It was averred by the counsel that National Health Insurance Fund had paid Kshs. 468,000/= for intensive care unit expenses and a further Kshs. 188,000 for High Dependency unit expenses leaving a balance of Kshs. 16,088,764/-.

PARA 90.

As to future medical expenses by reason of the nature of injuries sustained by the Plaintiff, the Plaintiff required continued medical for life and claimed for provision of future medical and nursing care together with quadriplegic equipment at total of Kshs. 23,545,120/-

PARA 91.

On diminished earning capacity, it was submitted that the Plaintiff now aged 28 years was prior to the accident the subject of this suit employed by Ketraco Limited as an Accounts Assistant at a net salary of Kshs. 153,219.00 per month. Contending that the retirement age of a person living with disability is pegged at 65 years according to Section 70 (b) of the Public Service Commission Regulations, 2020 subject to *the Constitution*.

PARA 92.

Counsel opined that the adoption of 37 years as the multiplier. To buttress this limb, reliance was placed on the cases of Engineer Samwel Ogola Ogege Vs Cabinet Secretary, Ministry of Transport and Public Works (State Department of Infrastructure) & Another; Public Service Commission & Another (Interested party) [2022] eKLR and Mumias Sugar Company Limited v Francis Wanalo [2007] eKLR.

PARA 93.

Submitting that the modest figure of Kshs. 159,259 as a multiplicand of $159,259 \times 12 \text{ months} \times 37 \text{ years} = 70,710,996.00$.

PARA 94.

Under nursing care, it was the case of the Plaintiff that the injuries sustained the plaintiff is unable to look after himself and will require a permanent assistance and care for the rest of his life for which claimed from the Defendants future costs of personal assistant at a monthly cost of Kshs. 20,000.00 x 12 Months x 37 years = 8,880,000

PARA 95.

Counsel made a total tabulation as follows;

SUBPARA 1.

General Damages..... Kshs. 6,000,000.00

SUBPARA 2.

Loss of consortium..... Kshs. 800,000.00

SUBPARA 3.

Diminished earning capacity.....Kshs. 70,710,996.00

SUBPARA 4.

Special Damages in Kenya..... Kshs. 17,311,148.30

SUBPARA 5.

Special Damages in India.....Kshs. 1,261,279.00

SUBPARA 6.



Future Medical Expenses..... Kshs. 23,545,120.00

SUBPARA 7.

Future nursing care..... Kshs. 8,880,000.00

Total Kshs. 127,508,543.30

Defendants Submissions

96. The Defendants in their submissions dated 27th October,2022 and filed in court on 2nd November,2022, wherein counsel submitted on liability and quantum.
97. As to liability, counsel submitted that the Plaintiff admitted that he lost control of his car after overtaking the lorry proves that had he been careful and attentive, this accident would not have occurred. Averring that in terms of the law of causation, the single act of the 2nd Defendant of missing a turn was not the only active cause that led to the accident. Contending that there was an intervening event by the Plaintiff who was driving at a high speed and failed to notice the Defendant's bus that was a head of him in sufficient time or at all. To bolster his case counsel placed reliance on the case of Daniel Nyandika Kimori v Monicah Achieng Ogola [2016] eKLR, and submitted that the Plaintiff despite noticing the Defendants car on the road at a distance of 100 meters, failed to stop or slow down and the fact that at trial he admitted he lost control of the car and the fact that the police referred the matter to insured proves that he was largely to blame for the accident.
98. As to quantum, counsel relied on the Testimony of Dr. Wambugu PM. Submitting that the Opinion by Dr. Wambugu of 14th July,2017 has been vindicated given the progressive recovery that has been achieved by the Plaintiff. His opinion that that the Plaintiff is not quadriplegic or paraplegic is further vindicated by the fact that the Plaintiff is able to use his hands.
99. Contending that Dr. Museve had in his report dated 17/08/2017 observed that the Plaintiff could shift to some extent on the wheelchair. Counsel opined that an award of Kshs. 2, million would suffice as adequate compensation for general damages. To buttress this point counsel relied on the cases of Porim Insurance Brokers Limited v Patrick Rugendo Mugambi [2021] eKLR, Simba Platinum Limited v Nicholas Auma Wandera [2021] eKLR and Cosmas Mutiso Muema v Kenya Road Transporters Limited & Another [2014] eKLR. counsel averred that the Plaintiff herein is not Paraplegic neither is he quadriplegic, he can control urine and stool. Reference was made to Dr. wambugu's Medical Report.
100. Regarding the loss of consortium, counsel submitted that in as much as the plaintiff uses wheelchair, he can move his legs, hands and hip. He did not suffer any nerve injuries that affected his sexual function. Submitting that the three reports on record by Dr. Munuve, Madhiwala and Dr. Wambugu do not give a prognosis on lost sexual function.
101. It was further the contention of the counsel that during the testimony of Dr. Wambugu, the said expert was of the opinion that the Plaintiff can still engage in sexual activity although he will need to be creative with his partner. Lamenting that the Plaintiff did not call his wife as a witness to corroborate this claim. To cement this limb counsel relied on the case of Acceler Global Logistics v Gladys Nasambu Waswa & Another [2020] eKLR, where loss consortium was considered.
102. Regarding lost earnings and diminished earning capacity, counsel opined that the Plaintiff is an accountant holding a master's degree in commerce, and he is a Certified Public Accountant. Arguing that at the time of the accident he had secured a job at Ketraco a state Corporation that is Government owned.



103. It was the case of the Defendant that during his testimony in court on 27/01/2021, the Plaintiff stated that he was still employed by Ketraco and was earning a salary. It was the submission of the counsel that Plaintiff has not lost his earnings and the claim for lost earnings should be dismissed since though pleaded it was not strictly proved as is required by law.
104. Counsel contended that the alternative prayer for diminished earning capacity the plaintiff did not tender in court any evidence to show that he could get allowance for field hitherto the accident. Lamenting that he did not tender any documentary evidence to show that he was or has been denied access to any allowances after the accident. That the pay slip that were filed in court depict three allowances over the period of time being commuter allowance, house allowance and responsibility allowance. That the pay slips are for May, June and July 2017 and no evidence was adduced to show existence of any other allowances.
105. It was the Defendants' case that the Plaintiff is still active and in gainful employment and has not clearly lost any income. There is no threat to his job security and the pay slips that were submitted in court show that he is permanently employed. To buttress these submissions counsel relied on the court of Appeal case of Paul N. Njoroge v Abdul Sabuni Sabonyo [2015] eKLR, where lost earning capacity was considered.
106. Regarding the special damages, counsel opined that they do not contest the expenses as pleaded in the Amended Plaintiff at paragraph 10 (a, d, e, f, g and h). contending that no evidence was adduced to support the prayers made in amended Plaintiff at paragraph I, j, k and l and they prayed that the same be disallowed.
107. As to claims made at paragraph 12 of the amended Plaintiff, it was submitted that Dr. Wambugu in his opinion expressed the view that the Plaintiff is not incontinent in stool and urine and as such the need for diapers is ruled out. Opining that at the time of his examination, the Plaintiff did not have any pressure sores hence the claim for dressing of pressure sores is not merited.
108. It was submitted that for the claim of physiotherapy, drugs and hospital attendances, it was the position of the Defendants that the Plaintiff has a medical insurance with his employer and is also a member of the National Hospital Insurance Fund. Contending that Dr. Madhiwal in his testimony affirmed that these expenses are catered for by NHIF. That these two medical providers cover these expenses and as such the same be disallowed.
109. As to the claim for future medication and surgeries, it was submitted that the Plaintiff has already undergone these surgeries. Opining that at the time Dr. Munuve and Dr. Madhiwala were examining the Plaintiff, he had not gone to India for treatment. Contending that the expenses that were incurred in India were incorporated in the Amended Plaintiff hence the plea for USD 5,000 to USD 6,000 is no longer relevant and the surgeries that had been anticipated had already taken place.
110. On claim under paragraph 15 of the Amended Plaintiff, it was submitted that for the need of an assistant, the Plaintiff is married and would receive support from his wife. Submitting that this notwithstanding, the cost of a helper would be the minimum wage given that the person needed need not to be an expert hence the minimum wage of a general laborer would provide the court with a benchmark or a reference point of making such an award.
111. It was the submission of the Defendant that the current minimum consolidated wage is Kshs. 13,572, noting that any sums made to the Plaintiff will be a lumpsum payment and considering the principle of accelerated pay which can be invested, they proposed a multiplier of 10 years giving a net sum of Kshs 1,628,640/=.



112. Counsel urged that damages are not meant to enrich the Plaintiff unjustly and, except for punitive damages, they are not meant to punish the torfeasor or a defendant.

Determination/analysis

113. The Court considered pleadings evidence on record and written submissions of parties through Counsel. The issues that emerge for determination on Appeal are liability and quantum.

Liability

114. It is undisputed that an accident took place on the 28th day of May 2016, at around 6:00a.m. the plaintiff was lawfully and carefully driving his motor vehicle registration number KBL 933X along Nairobi Mombasa Road coming from Nairobi heading to Machakos when at Namanga interchange, where the dual carriage begins, the 2nd Defendant, so carelessly, recklessly and negligently drove, managed and/or controlled motor vehicle registration number KBA 731T that he took the wrong lane along the said road. As a result of which the plaintiff sustained injuries.

115. The burden of proof as per Section 107 (1), 109 and 112 of the Evidence Act, Cap 80 Laws of Kenya is outlines as;

Whoever desires any court to give judgment as to any legal right or liability dependant on the existence of facts which he asserts must prove that those facts exist.

109. The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of the fact shall lie on any particular person.

112. in civil proceedings, when any fact is especially within the knowledge of any party to those proceedings, the burden of proving or disproving the fact is upon him."

116. In this case the burden of proof lies with the Plaintiff he testified that the he was lawfully and carefully driving his motor vehicle registration number KBL 933X along Nairobi Mombasa Road coming from Nairobi heading to Machakos when at Namanga interchange, where the dual carriage begins, the 2nd Defendant, so carelessly, recklessly and negligently drove, managed and/or controlled motor vehicle registration number KBA 731T that he took the wrong lane along the said road.

117. PW1's testimony was/is corroborated by PW2 a bystander who witnessed the accident. He recorded in his statement that on 28/5/2016 he was walking along Nairobi -Mombasa Road heading to work. He saw the school bus had taken the wrong lane and was being driven on the wrong side of the road at Namanga Interchange along Nairobi- Mombasa Road. He saw the bus collide head-on with an oncoming car being driven on the road. The saloon car tried to swerve and brake but it was in vain, the bus also attempted to brake but the distance was too short. The vehicles collided head-on.

118. PW1 testified and produced the Police Abstract dated 6-12-2016 over OB No. 3 of 28/5/2016 with regard to one Shadrack Mutunga who was involved in a road traffic accident on 28/5/2016 while being a driver of motor vehicle registration KBL 933X make Toyota. PEXH. 1- Police abstract dated 6/12/2016 was filled in by the investigating officer was PC Mwangangi who visited the scene and he blamed driver of motor vehicle KBA 731T Isuzu bus and recorded in the Police Abstract.

119. DW1 testified that he was at Athi River Interchange highway and suddenly realized that he had joined the wrong lane. DW1 had just moved a few meters and stopped so as to establish the correct route as



there were diversions. He flashed his headlights to the oncoming vehicle but it was at high speed and came and hit his vehicle. He told court that the Plaintiff ought to have seen his vehicle from a far. DW1 was not charged with a traffic offence. He blamed the Plaintiff or his driver for causing the accident due to over speeding and carelessness and had he been careful the accident could have been avoided.

120. In the case of *Masembe v Sugar Corporation and Another* [2002] 2 EA 434, the court observed;

“When a man drives a motor car along the road, he is bound to anticipate that there may be things and people or animals in the way at any moment, and he is bound not to go faster than will permit his court at any time to avoid anything he sees after he has seen it.... A reasonable person driving a motor vehicle on a highway with due care and attention, does not hit every stationary object on his way, merely because the object is wrongfully there. He takes reasonable steps to avoid hitting or colliding with the objectWhereas a driver is not to foresee every extremity of folly which occurs on the road, equally he is not certainly entitled to drive on the footing that other users of the road, either drivers or pedestrians, will exercise reasonable care. He is bound to anticipate any act which is reasonably foreseeable, that is to say anything which the experience of the road users teaches them that people do albeit negligently...”

121. In the case of *Isabella Wanjiru Karanja vs Washington Malele Nbi* Civil appeal No 50 of 1981 Hon. Chesoni J. observed;

“What I find makes the distinction in their blameworthiness is the fact that Isabella had under her control a lethal machine when Washington had none and all things being equal she was under an obligation to keep greater lookout for other road users.”

The evidence on record is that PW1 from the Police Abstract, PW2 eye witness & PW3 the Plaintiff and DW1 the 2nd Defendant agree /confirm that the collision occurred on the wrong lane. It is clear from the evidence that DW1 was to blame for the accident that even he admitted that he went to the plaintiff's lane which was the wrong lane.

122. The Court of Appeal in *Micheal Hubert Kloss & Another v David Seroney & 5 Others* [2009] eKLR:

“The determination of liability in a road traffic case is not a scientific affair. Lord Reid put it more graphically in *Stapley v Gypsum Mines Ltd (2)* [1953] A.C. 663 at p. 681 as follows:
“To determine what caused an accident from the point of view of legal liability is a most difficult task. If there is any valid logical or scientific theory of causation it is quite irrelevant in this connection. In a court of law this question must be decided as a properly instructed and reasonable jury would decide it...The question must be determined by applying common sense to the facts of each particular case. One may find that as a matter of history several people have been at fault and that if any one of them had acted properly the accident would not have happened, but that does not mean that the accident must be regarded as having been caused by the faults of all of them. One must discriminate between those faults which must be discarded as being too remote and those which must not. Sometimes it is proper to discard all but one and to regard that one as the sole cause, but in other cases it is proper to regard two or more as having jointly caused the accident. I doubt whether any test can be applied generally...”

123. The Plaintiff pleaded the doctrine of *res ipsa loquitur* in so far as is applicable and necessary to confirm that the accident was caused by the 2nd Defendant.



124. On the other hand, the 2nd Defendant and his testimony blamed the Plaintiff for the accident as he ought to have seen the bus as he came at high speed after overtaking a lorry.
125. In the case of Embu Public Road Services Ltd. v Riimi [1968] EA 22 the Court stated:
- “The doctrine of *res ipsa loquitur* is one which a plaintiff, by proving that an accident occurred in circumstances in which an accident should not have occurred, thereby discharges, in the absence of any explanation by the defendant, the original burden of showing negligence on the part of the person who caused the accident. The plaintiff, in those circumstances does not have to show any specific negligence but merely shows that an accident of that nature should not have occurred in those circumstances, which leads to the inference, the only inference, that the only reason for the accident must therefore be the negligence of the defendant...
126. From the law outlined above applied on the uncontested fact that DW2 was on the wrong lane it is a herculean task to visit responsibility on the Plaintiff driving on his proper lane to anticipate foresee and be on proper lookout of oncoming vehicles yet this was not the proper lane. Using the reasonable man’s test you cannot demand one to anticipate the most unlikely almost impossible. The Plaintiff was driving on the right lane overtook the lorry ahead as alleged and if he was negligent or not careful then the collision ought to have been with the said lorry and not the unexpected bus driven on the wrong lane. This Court finds no contribution to the collision by the Plaintiff. It is therefore this Court’s finding from the evidence adduced that DW1 the defendant was wholly to blame for the accident and thus I apportion liability at 100% as against the Defendant.

Quantum

127. As regards quantum, in *Woodruff v Dupont* [1964] EA 404 it was held by the East African Court of appeal that:

“The question as to quantum of damage is one of fact for the Trial Judge and the principles of law enunciated in the decided case are only guides. When those rules or principles are applied, however, it is essential to remember that in the end what has to be decided is a question of fact. Circumstances are so infinitely various that, however carefully general rules are framed, they must be construed with some liberality and too rigidly applied. The court must be careful to see that the principles laid down are never so narrowly interpreted as to prevent a judge of fact from doing justice between the parties. So to use them would be to misuse them...The quantum of damages being a question of fact for the trial Judge the sole question for determination in this appeal is not whether he followed any particular rules or the orthodox method in computing the damage claimed by the plaintiff, but whether the damages awarded are “such as may fairly and reasonable be considered as a rising according to the usual course of things, from the breach of the contract itself.” The plaintiff is not entitled to be compensated to such an extent as to place him in a better position than that in which he would have found himself had the contract been performed by the defendant.”

Medical Reports

The Plaintiff as outlined in his Statement was admitted at Aga Khan Hospital in ICU for days where he remained in a coma and was later transferred to High Dependency Unit and to normal Ward for 28 days totaling 119 days.

The Medical Reports filed and produced in Court as evidence are;



- a. Discharge Summary from Aga Khan Hospital
 - b. Medical Summary from Aga Khan Hospital
 - c. Medical Report by Dr George Museve of 28/11/2016 (PW4)
 - d. Medical Report by Dr George Museve of 18/7/2017 (PW4)
 - e. Medical Report by Dr Ashwin Madhiwalla of 25/9/2017 (PW5)
 - f. Medical Report by Dr Wambugu P.M. of 14/7 2017 (DW2)
128. On the issue of quantum, the Plaintiff's evidence is that he coupled with Doctor's Reports he sustained the following injuries; Bilateral closed fracture shaft of femur, Open right patella fracture with rupture of patella tendon Head injury with intra cerebral bleeding. Multiple cut wound of the face. Myositic bone of both the hips. Gross heterotopic ossification and fusion of both hips, knee and right elbow. 100% paralysis.
 129. DW2 examined Shadrack Mutunga and prepared the Medical Report. DW2 examined him on 14/7/2017 and found he had been involved in a road traffic accident when a vehicle he drove collided with another.
 130. He observed that Shadrack sustained; head injuries associated with loss of consciousness, laceration wound right eye lid-involving the tarsal plate fracture right elbow joint fracture of both femurs Rupture right patellar torn and compound fracture of patellar CT scan head revealed intracerebral hemorrhage with brain oedema X-rays lower limbs confirmed above fractures Cervical X-rays were normal
 131. DW2's opinion and prognosis are that Muasya's injuries;
'are consistent with blunt trauma as may have occurred during the accident. He sustained neural, skeletal and soft tissue injuries. The condition was further complicated by renal failure necessitating prolonged ICU care, He is now wheelchair bound and is unlikely to ever resume his normal duties as an Assistant Accountant. I do not hesitate to award him 100% as degree of permanent incapacitation.'
 132. All medical reports and doctors testimonies in Court are consistent as to PW1's permanent incapacitation.

General Damages

133. The Court of Appeal in *Jogoo Kimakia Bus Services Ltd v Electrocom International Ltd* [1992] KLR 177 the Court stated that:

“The law on damages stipulates various types of damages. The distinction between general and special damages is mainly a matter of pleading and evidence. General damages are awarded in respect of such damages as the law presumes to result from the infringement of a legal right or duty. Damages must be proved but the claimant may not be able to quantify exactly any particular items in it. Special damages are the precise amount of pecuniary loss which the claimant can prove to have followed from the particular facts set out in the pleadings. They must be specifically pleaded.”
134. See Also; *Joseph Kipkorir Rono v Kenya Breweries Limited & Another* Kericho HCCA No. 45 of 2003.
135. The Plaintiff submitted that an award of Kshs. 6,000,000/= would be adequate as general damages for pain and suffering. To buttress the aforementioned, counsel relied on the cases of Alex Otieno Amolo



& Another v Hayer Bishan Singh & Sons Limited [2016] eKLR, Simon Taveta v Mercy Mutitu Njeru [2014] eKLR and Eva Mueni Wambugu v Simon Peter Githae & Another [2012] eKLR.

136. The Defendant submitted that Ksh 2,000,000/- would be sufficient.
137. This Court considered the excruciating pain and suffering the Plaintiff underwent during and after the accident, PW2 in his statement gave detailed account of how with other on lookers they had to wake up the Plaintiff and removed him from the wreckage and rushed him to Shalom Hospital. PW3, the Plaintiff's long stay & treatment in AgaKhan Hospital and later to India and back and continuing treatment must have caused mental anguish and financial drain. Cumulatively, all the pain suffering anxiety and knowing he will remain incapacitated Ksh 2,000,000/- is way too low.
138. I agree with the Plaintiff that an award of kshs 6,000 ,000 would be adequate as compensation for general damages in accordance with the principles of similar and comparative damages with the case law relied upon.

Consortium

139. On the head of loss of consortium, it was submitted that the testimony of both Dr. George Museve (PW4) and Dr. Ashwin Madhiwala (PW5) that the Plaintiff is quadriplegic for reasons that he has lost the use of his limbs and is thus wheel bound. Submitting that the Plaintiff was a young virile 27-year-old newly married with one child. Submitting that due to the injuries he is unable to fulfill his and enjoy his conjugal obligations.
140. In Innocent Keti Makaya Denge v Peter Kipkore Cheserek & another [2015] eKLR, Hon. Githua, L. J. was of the view that:

“In my view, loss of consortium can only be subsumed in a claim for loss of amenities in an action instituted by a survivor of an accident in which it is claimed that owing to the injuries sustained in the accident in question, the plaintiff was incapable of enjoying consortium with his/her spouse and that his or her quality of life had as a result been diminished. Loss of consortium cannot thus be maintained as a claim on its own.”

141. The Defendant relied on the case of Acceler Global Logistics v Gladys Nasambu Waswa & Anor [2020] eKLR where the Court, Mativo J (as he then was) took the view marital consortium is a matter of considerable uncertainty and the extent of recovery is a matter of uncertainty. The Defendant's claim that PW3 's wife ought to have testified is not respectful in the circumstances. These are private matters and consortium is a right in every marriage. This claim shall be subsumed under the General damages of Ksh 6,000,000/- for pain suffering & loss of amenities in reliance to the cases Alex Otieno Amolo & Anor v Hayer Bishan Singh & Sons Ltd 2016 eKLR where the award of Ksh 6,000,000/- was granted for pain suffering & loss of amenities. See also Simon Taveta v Mercy Mutitu Njeru [2014]eKLR.

Special Damages

142. The Court of Appeal in Hahn V. Singh, Civil Appeal No. 42 Of 1983 [1985] KLR 716, at P. 717, and 721 where the Learned Judges of Appeal - Kneller, Nyarangi JJA, and Chesoni Ag. J.A. - held:

“Special damages must not only be specifically claimed (pleaded) but also strictly proved.... for they are not the direct natural or probable consequence of the act complained of and may not be inferred from the act. The degree of certainty and particularity of proof required depends on the circumstances and nature of the acts themselves.”



143. At Paragraph 10 (a) of the Amended Complaint, the Plaintiff pleaded that as a result of the said accident he sustained injuries and suffered loss and damage for which he holds the Defendants liable.
144. The outline entails surgeries admission and treatment at Aga Khan Hospital and related costs as follows; totaling Ksh 17,311,148/=.
145. At Paragraph 10 (b) of the Amended Complaint, the Plaintiff pleaded that subsequent to filing the instant suit on 22/12/2017, the Plaintiff sought further medical attention in India (Fortis FLt Lt Rajan Dhall Hospital) as recommended by PW5 and the receipts are attached
Totaling Ksh 1,261,279/- at the rate of 1 Indian Rupee is Ksh 1,40 Ksh a fact the Defendants took issue with and demanded strict proof thereof.
146. The Plaintiff testified that he was rushed to Shalom hospital, he was later transferred to Aga Khan Hospital. An emergency surgery was done. PW3 was in a coma for about three months. He incurred hospital expenses. He had the receipts as proof: PEXH 4- the receipts of payment from Aga Khan Hospital. PW3 paid a total sum of Kshs. 8,357,192/=. He owes the Hospital a sum of Kshs. 7,731,572/= as at 26/1/2021. PEXH 5- A hospital (in patient) final bill dated 26/1/2021 from Aga Khan Hospital. PW3 was discharged from Aga Khan on 26/9/2016 and later went to India for further treatment on corrective surgery. Opining that the same was done at a cost. That he has the receipts of payment; PEXH 6-15 receipts and bundle of invoices from Forties hospital in India. PW3 underwent physiotherapy by Dr. Subbash Chanda and he produced the receipts. PEXH 7-9 receipts of payment issued by Dr. Subbash Chanda. While in India he stayed at Ashok house. He produced the accommodation expenses receipts. PEXH 8-9 receipts of payments from Ashok House, several other expenses were incurred in India. He produced some prescriptions by the doctors. PEXH 9-A bundle of Doctor's prescriptions. He produced bundles of receipts from Snowbell Medicos. PEXH 10-A bundle of 60 receipts from Snowbell Medicos and Jai Kacha Mai. PW3 testified further that he returned to Kenya from India in November, 2020. He had also incurred other expenses he produced the receipts. PEXH 11-36 receipts and 24 invoices from Medilink Africa. The plaintiff provided receipts for the above mentioned treatments at Agakhan and in India.
147. The Defendant contest cost of diapers and wheelchair but from PW4 Dr. Museve, his report is that the Plaintiff will remain wheelchair bound and will require several wheel chairs in his lifetime and he will remain dependent on other people for his daily care. He also has urinary incontinence and will require diapers. The issue of future surgeries is suggested by the Medical Reports of Dr. Ashwin Madhiwala.

Future Medical Care & Expenses

148. As to future medical expenses by reason of the nature of injuries sustained by the Plaintiff, the Plaintiff required continued medical for life and claimed for provision of future medical and nursing care together with quadriplegic equipment at total of Kshs. 23,545,120/-
149. As regards the award for future medical expenses, authorities are agreed that an award for future medical expenses must stand on its own as a specific prayer to be specifically established.
150. Ringera, J (as he then was) in Jackson Wanyoike v Kenya Bus Services Ltd & Another Nairobi (Milimani) HCCC NO. 297 of 2002 held that costs of future medical care must be pleaded, as they are special damages.
151. Similarly, the Court of Appeal in Sheikh Omar Dahman T/A Malindi Bus v Denis Jones Kisomo Civil Appeal No. 154 of 1993, held that cost of future medical operation is special damages, which must be



pleaded. See also Mbaka Nguru & Another vs. James George Rakwar Civil Appeal No. 133 of 1998 [1995-1998] 1 EA 24.

Diminished Capacity

152. On diminished earning capacity, it was submitted that the Plaintiff now aged 28 years was prior to the accident the subject of this suit employed by Ketraco Limited as an Accounts Assistant at a net salary of Kshs. 153,219.00 per month. Contending that the retirement age of a person living with disability is pegged at 65 years according to Section 70 (b) of the Public Service Commission Regulations, 2020 subject to *the Constitution*.
153. In the case of Catherine Gatwiri vs Peter Mwenda Karaai [2018] eKLR where the court held that in arriving at an award for diminished earning capacity, the court will consider the disadvantage the respondent will suffer in future for not working because of the injuries and take into account factors such as age and qualifications of the injured person, remaining working life, disabilities among others.
154. The plaintiff in his testimony admitted that he was earning Kshs. 153,000/= per month before the accident. That the accident has affected his career since his masters degree program was cut short. PW3 told the court that he is now unable to get some promotion at the work place.
155. I find that the plaintiff is still working the accident even though he will on a wheel chair, he had asked for Kshs 70,710,996 which I find inordinately high. In the case of Paul Njoroge vs Abdu Saburi Sabonyo [2015] eKLR where the Court of Appeal declined to consider a claim for loss of earning capacity where the claimant, a police officer, was still in office and had not shown that his employment was affected.
156. The plaintiff has proved to the required standard that his earning capacity was/is affected by the injuries. He was /is in gainful employment in Public Institution and on the fateful day was going to work. In the Plaintiff's bundle Employment Records and Education Testimonials are attached;
 - a. Appointment Letter from Ketraco dated 25/7/2013 for Post of Accounts Assistant (Treasury)
 - b. Confirmation of Employment by letter dated 18/3/2014
 - c. Payslip /Salary advise May 2017 Gross Pay Ksh 153,219/- Net Pay Ksh 82,516/-
 - d. Payslip /Salary advise June 2017 & July 2017
 - e. Bachelor of Commerce Degree 1st Class Honours KCA University
 - f. KASNEB -Certified Public Accounts
 - g. Admission to Kenyatta University for Masters Program 2014/2015 Academic Year.
157. The issue of the Plaintiff being dismissed or services terminated on health grounds was not proved. In the absence of such proof and considering the Plaintiff's Constitutional right not to be discriminated against on the basis of disability, vide Article 54 (2) of *the Constitution*, the Court will consider Loss of Earnings while he was critically ill and was seeking treatment and therefore away from work if there is proof of non- payment.
158. The Plaintiff through his advocate submitted that in 3 years of employment he advanced and was promoted. Had he completed his Masters which only research was remaining he would have risen the ranks to middle to top level management. The plaintiff had a promising future which has since due to the accident led to stagnation due to incapacitation.
159. I am persuaded by the above argument although the Defendants submitted through their advocate that prima facie the Plaintiff has not lost employment and still gets a salary. The defendants submitted



that since the plaintiff has good memory and cognitive abilities accountancy as a profession the Plaintiff is still competent.

160. I find unlike before the accident, whilst the Plaintiff may still be employed but the working conditions environment have changed; he will be brought and taken home, the load type and turnaround time for completion will change and he has no guarantee as to equal opportunity to promotion, retention in employment on same terms, conducive working environment and amenities and more so non-completion of his Master's program where he expended own resources. He is now vulnerable health wise and may heal or deteriorate. With all these possibilities against him, it is not guaranteed that all factors will be held constant until retirement at 65 years. For these reasons I am minded to cushion any such eventuality and fortified by the case of *Mumias Sugar Company Limited v Francis Wanalo* [2007]eKLR;

From the above analysis of the English case law and the decision of this Court in *Butler v Butler*, the following principles, among others, emerge. The award for loss of earning capacity can be made both when the plaintiff is employed at the time of the trial and even when he is not so employed. The justification for the award when plaintiff is employed is to compensate the plaintiff for the risk that the disability has exposed him of either losing his job in future or in case he loses the job, his diminution of chances of getting an alternative job in the labour market while the justification for the award where the plaintiff is not employed at the date of trial, is to compensate the plaintiff for the risk that he will not get employment or suitable employment in future. Loss of earning capacity can be claimed and awarded as part of general damages for pain, suffering and loss of amenities or as a separate head of damages. The award can be a token one, modest or substantial depending on the circumstances of each case. There is no formula for assessing loss of earning capacity. Nevertheless, the Judge has to apply the correct principles and take the relevant factors into account in order to ascertain the real or approximate financial loss that the plaintiff has suffered as a result of disability."

161. The Court grants a modest global sum to cater for any eventualities and conditions and hardship and inconveniences of carrying out duties of the employment of Kshs.10,000,000/-

Future Nursing Care

162. All doctors Reports propose support nursing care for the Plaintiff due to 100% incapacity. The amount proposed by the Plaintiff is Ksh 20,000/- a month. The Defendant proposed the Plaintiff's wife takes up nursing the Plaintiff. I beg to differ, the Plaintiff's wife will also seek gainful employment of entrepreneurship to help support the family while taking care of their child. So while she is engaged in looking after her husband it will not be possible to be fulltime. PW5 Dr. Museve confirmed the Plaintiff will require support and nursing. DW2 Dr. Wambugu acknowledged nursing care is necessary and proposed at Ksh 15,000/-per month.

The Nursing care shall be awarded as follows;

Ksh 15,000/- x 12 months x 30 years= Kshs.5,400,000/-

Disposition

- 1 In the premises, I award compensation as follows
General Damages..... Kshs. 6,000,000.00
(Pain & suffering & loss of amenities)



Special Damages in Kenya..... Kshs. 17,102,394.00
(as per the attached receipts)
Special Damages in India..... Kshs. 1,261,279.00
(As pleaded)
Diminished Earning capacity.....Kshs. 10,000,000.00
Future Medical Expenses..... Kshs. 23,545,120.00
Future Nursing CareKshs. 5,400,000.00
Total Kshs. 63,308,793.00

WITH INTEREST & COSTS

It is so ordered.

**JUDGMENT DELIVERED SIGNED & DATED IN OPEN COURT IN MACHAKOS ON 30TH
APRIL, 2024 (VIRTUAL/PHYSICAL CONFERENCE).**

M.W.MUIGAI

JUDGE

IN THE PRESENCE OF:

N/A - FOR THE PLAINTIFF

MR. KIPLAGAT - FOR THE DEFENDANTS

GEOFFREY/PATRICK - COURT ASSISTANT(S)

Mr. Kiplagat: We pray for 60 days Stay of Execution.

COURT: Stay of execution granted.

M.W.MUIGAI

JUDGE

